IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6222 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYED MAHEMUDALI ALIAS BHURIOSARFARAJALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6222 of 2004

MR NK MAJMUDAR for Petitioner No. 1

MR SP MAJMUDAR for Petitioner No. 1

MR LR PUJARI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 01.04.2004 passed by the District

Magistrate, Patan in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner -detenu has been branded as "Chronic Bootlegger"

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in four different offences punishable under Sections 66B, 65AE, 116B of the Bombay Prohibition Act and one offence punishable under the Indian Penal Code, between 9.11.2002 to 12.02.2004. The first offence registered against the petitioner detenu is under IPC and thereafter on 12.08.2003 the first offence under the Prohibition Act was registered against him wherein liquor worth Rs.200/ was recovered and last case under the Prohibition Act was registered against the detenu on 12.02.2004.

3. The impugned order of detention has been assailed by ld. counsel Mr. Majmudar appearing for the petitioner detenu on various grounds. However, ld. counsel appearing for the petitioner has constrained himself mainly on three grounds. The first ground raised by ld. counsel for the petitioner detenu is that the detaining authority has wrongly recorded the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the maintenance of public order. The second point raised is that the delay caused in passing the order of detention which goes to the root of the validity of the order. It is pointed out that last offence referred to by the detaining authority was allegedly committed on 12.02.2004 and the order of detention is of 01.04.2004. Recording of the statements of the witnesses if considered, the last statement has been recorded on 17.03.2004 and it was verified by DySP on 18.03.2004 i.e. on the next date. So, from that date, if time duration is considered, the authority has taken about 12 to 13 days in passing the order of detention and there is no explanation as to why order of detention was not passed by the detaining authority immediately after commission of last offence on 12.02.2004. The third point raised is that though the representation was made by the detenu on 13.04.2004 and had reached to the authority on 15.04.2004. It was not dealt with properly and it is mentioned in para-6 of the petition that till the date of petition i.e. 30.04.2004, it was not considered.

4. I have considered all the three contentions raised by ld. counsel Mr. Majmurdar for the petitioner and I have gone through the grounds of detention and annexures annexed to the petition. Having considered

various aspects of the matter and in absence of formal affidavit of resistance clarifying the contingencies placed by the petitioner detenu, it is held that on all the three grounds, the impugned order of detention requires to be quashed and set aside by accepting the arguments advanced by ld. counsel appearing for the petitioner supported by relevant documentary evidence on record.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 01.04.2004 passed by the District Magistrate, Patan is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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